

VENABLE, BAETJER, HOWARD & CIVILETTI, LLP
Including professional corporations

1201 New York Avenue, N.W., Suite 1000
Washington, D.C. 20005-3917
(202) 962-4800, Fax (202) 962-8300

OFFICES IN

WASHINGTON, D.C.
MARYLAND
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ATTORNEYS AT LAW

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA Messenger
William F. Caton
Acting Secretary
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

Re: CC Docket No. 95-155 - Request for Further Comments

Dear Mr. Caton:

Enclosed for filing please find an original and ten (10) copies of the Supplemental Reply Comments of The Direct Marketing Association in the above-referenced docket.

We are also providing one additional copy of the Supplemental Reply Comments, which we kindly ask that you date-stamp and return to the messenger. We appreciate your assistance.

Please contact me if you have any questions.

Sincerely,



Heather L. McDowell

Enclosures
cc: Network Services Division (2)
ITS, Inc.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
) CC Docket No. 95-155
Toll Free Service Access Codes)

**SUPPLEMENTAL REPLY COMMENTS OF THE
DIRECT MARKETING ASSOCIATION**

The Direct Marketing Association (The DMA) submits these Supplemental Reply Comments for the limited purpose of responding to arguments that giving incumbent vanity number holders a right of first-refusal would promote rapid depletion of toll-free numbers in new SACs and be complex to administer. We show that these theoretical concerns have been significantly overstated, and in any event, are easily resolved.

**A RIGHT-OF-FIRST REFUSAL APPROACH INCORPORATES AN
OBLIGATION THAT THE INCUMBENT SUBSCRIBER EXERCISE OR
WAIVE ITS RIGHT TO THE SAME NUMBER IN FUTURE SACs**

There is no disagreement that subscribers that have reserved complementary numbers in the 888 SAC pursuant to the FCC's own directive to set them aside are entitled to a right-of-first-refusal for those numbers. Indeed, even parties that generally oppose the right-of-first-refusal approach acknowledge that these subscribers have interests in the 888 complements that should be preserved and protected.^{1/}

^{1/} See, e.g., Further Comments of US West Communications, Inc., at 4, in Toll Free Service Access Codes, CC Dkt. No. 95-155 (Notice released July 2, 1997).

Beyond this, the most straightforward solution is to impose a “use-or-lose” standard in combination with a requirement that the subscriber pay a fee to reimburse the RespOrg’s costs for exercise of the right-of-first-refusal. Under our proposal, an incumbent toll-free holder would have a right-of-first-refusal in each and every new toll-free SAC, but only as long as it continues to exercise that right. Thus, a subscriber that fails exercise its right to the same number when a new SAC is deployed would permanently waive its first-refusal rights for any future SAC.

The “use-or-lose” rule would, for instance, apply as follows: An incumbent 800 vanity number subscriber would have a right-of-first refusal for assignment of the complementary number in 888; if it exercised that right, it would also later have a right-of-first-refusal for the complementary number in 877, and so on. On the other hand, if the incumbent 800 subscriber did not reserve its 888 complement, the subscriber would have no preferred status to reserve the complementary number in 877 or in any subsequent SAC.^{2/}

The use-or-lose principle could be applied equally well to The DMA’s proposal that incumbent subscribers also be offered the option of releasing the same NXX-XXXX in a new SAC on condition that it not be used in connection with a particular acronym. Thus, an incumbent subscriber in the 800 SAC would

^{2/} The DMA contemplates that this would operate on a forward-looking basis so that a subscriber whose first vanity or branded number was in the 877 SAC would not acquire a right of first refusal for the same number in the 888 or 800 SACs. Of course, 888, 877, or other SAC subscribers would remain free to reserve complementary numbers in a previous SAC if they are still available; they simply would not receive special preference.

have the option to release a specific seven digits in 888 on condition that they not be used or promoted with a specific acronym. The incumbent subscriber would thereby also preserve its right to exercise a similar option with respect to the same seven digits in the 877 SAC. If, however, the incumbent subscriber unconditionally released the same seven digits for use in 888, then it would have no right to later attempt to condition or limit use of its preferred acronym in subsequent SACs.

Applying this standard, the alleged administrative burdens associated with resolving disputes between subscribers disappear. There would, for example, be no dispute between a subscriber promoting 800-CALLNOW and another marketing 888-CALLNOW; the subscriber to 888-CALLNOW (888-225-5669) would be permitted to use the same phrase or acronym only if the subscriber to 800-CALLNOW had unconditionally released the use of the same seven digits (225-5669) in the 888 SAC. Similarly, there would be no disagreement between a subscriber to 800-123-4567 and a subscriber to 888-123-4567. Again, the 888 subscriber would only have that number if the 800 subscriber had already waived its rights to the number in 888.

The right-of-first-refusal plan that The DMA has advanced would also, even without added incentives, promote rather than curtail the accessibility of new toll-free numbers. The DMA's proposal would allow incumbent subscribers the option of releasing the same number in a new SAC as long as it was not used in connection with a specified acronym. This mechanism not only enables incumbent subscribers to protect against unfair competition, but also liberates

the same number for use by another subscriber. Thus, it is simply incorrect that the right-of-first refusal alternative will exacerbate rapid exhaustion of numbers in new SACs.

Furthermore, passing on to vanity or branded number subscribers a fee that recoups RespOrgs' administrative costs in setting aside the same number in successive SACs would further minimize the type of excessive toll-free number reservation that can accelerate the depletion of the toll-free number supply. The imposition of a cost-based fee would provide incumbent subscribers with sufficient economic incentive to give realistic and thoughtful consideration to whether or not they should reserve complementary numbers in newly deployed SACs. With these incentives in place, market considerations and sound business judgment will effectively assure that a company does not reserve more numbers than it truly needs to protect its investment.

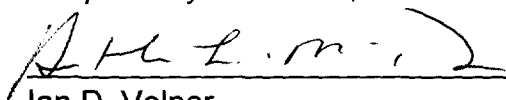
CONCLUSION

It may be true that, as successive SACs are introduced, consumers will gradually become more familiar, and consequently, less easily confused, by the existence of different toll-free SACs. For instance, there eventually may be fewer errors presently attributable to the simple fact that many callers forget or do not know that 888 exists and, therefore, dial an 800 prefix out of habit. As

revealed in the comments submitted by The DMA and other parties, however, industry is still far from achieving that goal and confusion and errors persist.^{3/}

Moreover, consumer confusion about the *existence* of multiple toll-free SACs is not the only reason the FCC should protect existing vanity and branded numbers. The potential for use and misuse of the remaining seven digits of a telephone number *in conjunction* with other SACs threatens incumbent subscribers' interests. Thus, even if consumers one day come to understand -- and correctly distinguish between - various SACs in and of themselves, the value of an existing vanity or branded NXX-XXXX digits may still be jeopardized if it is used in a new SAC. The incumbent holder of a vanity or branded number is the only entity that can or should make that determination. A use-or-lose approach to assigning numbers on right-of-first-refusal basis will ably ensure that such decisions are well-considered and economically sound.

Respectfully submitted,



Ian D. Volner

Heather L. McDowell

Venable, Baetjer, Howard & Civiletti, L.L.P.

1201 New York Avenue, N.W., Suite 1000

Washington D.C. 20580

202/962-4800

Counsel to The Direct Marketing Association

July 28, 1997

^{3/}

See, e.g., Supplemental Comments of the American Car Rental Association, at 3-4, in Toll Free Service Access Codes, CC Dkt. No. 95-155 (Notice released July 2, 1997).